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# Supreme Court of the United States

**October Term, 1976**
**No. 76-125**

AMERICAN ELECTRO-COATINGS, INC.,
*Petitioner,*

vs.

RANSBURG CORPORATION, ELECTRO PAINTERS, INCORPORATED, GF BUSINESS EQUIPMENT, INC., THE GENERAL ELECTRIC COMPANY, and PARKWOOD LAMINATES, INC.,
*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## BRIEF OF RESPONDENT, RANSBURG CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit, entered on April 9, 1975, is reproduced in petitioner's appendix at p. A3. The order of the Sixth Circuit denying the petition for rehearing, entered on May 4, 1976, is reproduced in petitioner's appendix at p. A5.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## QUESTION PRESENTED

Whether the Court of Appeals, in dismissing petitioner's interlocutory appeal to that Court, correctly held that petitioner had failed to file a timely notice of appeal, where the District Court decision appealed from was originally entered on May 28, 1975, and the notice of appeal was not filed until July 24, 1975?

## STATEMENT OF THE CASE

This is an action in which the plaintiff-petitioner, American Electro-Coatings, Inc. ("American"), has filed suit against defendant-respondent, Ransburg Corporation ("Ransburg"), and other defendants in the United States District Court for the Northern District of Ohio: (1) seeking a declaratory judgment that Ransburg has not validly terminated certain agreements pursuant to which Ransburg leased patented painting equipment to petitioner; (2) seeking a declaration of the invalidity of Ransburg's patents on such equipment; and (3) asserting a variety of antitrust claims against all of the various defendants. The defendants have answered and denied these allegations, and Ransburg and defendant Electro Painters, Incorporated have asserted various causes of action against petitioner by way of counterclaim. The case is still pending in the District Court, a trial date not yet having been set, and the



decision of the Court of Appeals as to which certiorari is sought concerns an admittedly interlocutory order of the District Court.

The proceedings relevant to the petition can be briefly explained. On February 10, 1975 petitioner filed in the District Court a "Motion to Establish Escrow Account," pursuant to which petitioner requested that the District Court establish an escrow acount into which petitioner, during the pendency of the action, could pay amounts due Ransburg under the various lease agreements between petitioner and Ransburg which petitioner was suing to preserve. On May 28, 1975 the District Court entered a Memorandum Opinion and Order overruling petitioner's motion for the establishment of an escrow account (P. App. A10). Petitioner, following that decision, filed no notice of appeal, but instead, on June 9, 1975, filed a "Motion for Reconsideration and Reversal of May 28, 1975 Opinion and Order," in which petitioner requested that the District Court reconsider its May 28, 1975 order. After the District Court, on July 1, 1975 (P. App. A16), overruled petitioner's motion for reconsideration, and refused to modify its May 28, 1975 order refusing to establish an escrow account, petitioner filed a notice of appeal on July 24, 1975 (P. Br., p. 10). Petitioner purported to appeal the District Court's refusal to establish an escrow account to the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. §1292(a)(1), which vests courts of appeals with jurisdiction to entertain appeals from interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions."

Respondent Ransburg then filed in the Sixth Circuit a motion to dismiss the appeal (Record, Appellee Ransburg Corporation's Motion to Dismiss Appeal, filed August 18, 1975), contending: (1) that the notice of appeal had

been untimely under Rule 4(a) of the Federal Rules of Appellate Procedure since it had been filed more than 30 days after the District Court had originally refused to order an escrow; and (2) that the District Court's order refusing to establish an escrow, which was admittedly interlocutory in nature, was not an order modifying, refusing or dissolving an injunction within the meaning of 28 U.S.C. §1292(a)(1). On April 9, 1976 the Sixth Circuit granted respondent Ransburg's motion to dismiss the appeal, citing two separate and independent grounds for its decision: (1) the failure by petitioner American to file a timely notice of appeal; and (2) the unappealable nature of the interlocutory order of the District Court (P. App. A3). After petitioner's motion for rehearing was denied by the Sixth Circuit on May 4, 1976, petitioner filed its petition for writ of certiorari.

## REASONS FOR NOT GRANTING THE WRIT

**The Decision of the Court of Appeals to Dismiss Petitioner's Interlocutory Appeal Because of Its Determination That Petitioner's Notice of Appeal Was Not Timely Filed Does Not Present Any Important Question of Law Meriting This Court's Consideration.**

Petitioner devotes virtually its entire brief to a discussion of the merits of the District Court's refusal to order an escrow and to the purported relevance of this Court's decision in *Lear, Inc. v. Adkins*, 395 U.S. 653 (1969) to the merits of the escrow issue. The fact is, however, that these matters were never considered or decided by the Court of Appeals, and the questions which petitioner asserts relate to such matters are not present for review by this Court. The Court of Appeals did not reach the merits of the escrow issue because it dismissed petitioner's interlocutory appeal, one independent ground for such dismissal having been the Court of Appeals' determination that petitioner had not filed a timely notice of appeal (P. App. A3). Since the existence of a single independent ground for a Court of Appeals decision which is itself not worthy of a grant of certiorari will bar granting of the writ, the central question presented by the petition is whether or not this Court should grant certiorari to review the Court of Appeals' determination that petitioner's notice of appeal was not timely filed. *Monrosa v. Carbon Black, Inc.*, 359 U.S. 180, 184 (1959); STERN AND GRESSMAN, SUPREME COURT PRACTICE, pp. 157, 315 (4th ed. 1969).



The answer to this question, which petitioner does not address at all in its petition, is quite clear. The correctness of a Court of Appeals ruling on the timeliness of the filing of a particular notice of appeal is a minor procedural decision of the most routine and specific nature imaginable. It falls far short of presenting the kind of broad and important question of law which would justify the time and attention of this Court. Moreover, where, as here, the appeal to the Court of Appeals has been from an interlocutory order of the District Court, only very exceptional circumstances will justify this Court's granting a writ of certiorari to review the Court of Appeals ruling. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584-85 (1952); *American Construction Co. v. Jacksonville, T. & K. Ry.*, 148 U.S. 372 (1892). Such exceptional circumstances are certainly not present here, where petitioner is simply seeking to argue to this Court the issue of the timeliness of its notice of appeal filed below.

The fact is that petitioner filed its notice of appeal 57 days after the original District Court decision from

which petitioner purported to appeal, some 27 days later than the 30-day time period allowed for filing a notice of appeal under Rule 4(a) of the Federal Rules of Appellate Procedure. Since compliance with the 30-day time period of Rule 4(a) is jurisdictional, *Berman v. United States*, 378 U.S. 530 (1964), the Court of Appeals was bound to dismiss this appeal, and petitioner could not extend or toll this 30-day period by having filed in the District Court a motion for reconsideration which was overruled. *Stiller v. Squeez-A-Purse Corp.*, 251 F.2d 561, 563 (6th Cir. 1958); see *Sonnenblick-Goldman Corp. v. Norwalk*, 420 F.2d 858 (3d Cir. 1970); 9 MOORE'S FEDERAL PRACTICE, ¶204.12[1]. More importantly, wholly apart from the correctness of the Court of Appeals decision in this case, the fact remains that this Court does not sit to review routine decisions by Courts of Appeals on the timeliness of notice of appeal filings.[1]

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1. While the lack of certiorari worthiness of this independent ground for the Court of Appeals decision is, as noted above, sufficient to bar granting the writ in this case, it should also be noted that the second independent ground for the Court of Appeals decision would be equally lacking as a basis for granting certiorari. Petitioner's motion in the District Court did not suggest that it was a motion for an injunction, and no such claim was made until petitioner sought to use 28 U.S.C. §1292(a)(1) to take an interlocutory appeal to the Sixth Circuit. The decision by the Court of Appeals that the very specialized type of interlocutory pretrial order involved in this case, under which the District Court refused to establish an escrow account for payments under a particular type of lease agreement, was obviously not an injunction order appealable under 28 U.S.C. §1292(a)(1), does not present any broad and important legal question of the type necessary for granting certiorari.



## CONCLUSION

For the foregoing reasons, respondent Ransburg Corporation submits that the petition of American Electro-Coatings, Inc. for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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